

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3624 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

JANMOHMED HUSENKHAN PATHAN

Versus

DISTRICT COLLECTOR

Appearance:

MR JT TRIVEDI for Petitioner

MR SP DAVE for Respondents

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 03/02/97

ORAL JUDGEMENT

The question in the present petition is, as to whether the land bearing Survey Number (sometimes referred as 'Block Number' also) 233, i.e. old Survey Number 129/5, would be a land of 'new tenure' or an 'old tenure'. I would answer the question by saying that the land happens to be an old tenure one.

It appears that, in respect of the above said land which should be referred to as the land bearing old Survey No.129/5, there were certain proceedings. The question was as to whether the said land would be the land of an old tenure or a new tenure. The proceedings were decided in favour of the land-holder. Any how, the matter was carried before the Government and it came to be decided by the Deputy Secretary (Appeals), Department of Revenue, State of Gujarat, Ahmedabad, under the orders dated December 13, 1993. Though the matter came to be remanded, practically, a decision appears to have been taken by the Deputy Secretary to the effect that, the land appears to be an old tenure land. Any how, after the remand, there were the fresh orders dated February 8, 1995, available at Annexure.A. Without adverting too many questions raised by the remanding authority, the Collector, Panchmahal has taken the view that the land would be a new tenure land. The matter thereafter has gone once again before the Deputy Secretary (Appeals). In these proceedings, under the orders dated April 22, 1996, the orders of the Collector, came to be confirmed and the revision application came to be dismissed. These are the orders in challenge before me in the present petition.

When the reference is made to the orders of remand dated December 13, 1993, despatched on January 29, 1994, it is clear that everything was examined and the remanding authority had practically taken the view that, the land is an old tenure land. Any how, when the petitioner has ultimately lost in the matter, there could be the endeavour on the part of this Court to ascertain the exact position obtainable from the record. There has been a statement under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. This statement would go to show the description of the land before and after the consolidation. Any how, in both the columns, i.e. prior to and after the consolidation, the land in question, i.e. Survey No. 129/5 has been shown as the land of the old tenure. It is, thus, clear that even under the proceedings under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, at all material times, the land has been treated as a land of the old tenure, but, one can go even beyond that. Mutation Entry registered under which ME No. 239 came to be posted in the revenue record way back in the year 1925 would also go to show that the land has been treated as the land of old tenure. This entry was required to be posted on June 19, 1925 because, there was a redemption of a mortgage. This entry describes the

land in question as a land of the old tenure. This position has been accepted way back in the year 1925. Moreover, as rightly pointed out by the orders of remand pronounced by the Deputy Secretary (Appeals), this land was the subject-matter of various transactions in past and that, at no occasion, any objection came to be raised against the transactions like, sale or mortgage. If the land were to be a new tenure land, these transactions could have been objected by the appropriate revenue authority and the necessary consequences could have followed. Any how, this has not happened.

Therefore, merely because on one occasion, an entry has been made saying that the land appears to be a new tenure land cannot be accepted to be a conclusive entry in view of the other documentary evidence on record to which a reference has been made by me in detail. Thus, it is clear that, excepting some entry in the revenue record saying that the land appears to be a new tenure land, everything is in favour of the petitioner. Right from the year 1925, which is the oldest available record before me, the land has been accepted as the land of the old tenure.

Learned Govt. Counsel Mr. Dave wanted to urge that, at the time of promulgation of the record, the objection could have been taken by the land holders saying that the land is not a new tenure land. Mr. Dave proceeds to contend that as such, no objection has been taken in past, the above said position should be taken as a concluded one and that now, there should not be any scope of a debate especially in a petition before this Court. But, it shall have to be appreciated that the present petitioner happens to be a purchaser of the land from the original occupant. Nothing is coming forth on record to warrant a conclusion that, before the promulgation of the record, the requisite notice came to be given to the original occupant. There is nothing on record and even that is not the case of the State that, at the time of the promulgation of the record any such notice came to be given to the present petitioner. Moreover, there is absolutely no indication from the papers to come to any conclusion as to the year in which the promulgation had taken place.

Therefore, whatever available on the record would go to show that, right from the inception, the land has been treated as an old tenure land. The petition, therefore, requires to be recognised. The same is hereby accordingly granted. The impugned orders are hereby quashed and set aside. It is accepted that the land is

an old tenure land and the revenue authorities are hereby accordingly ordered and directed to post the necessary entry in the revenue record accordingly. Rule is made absolute to the above said extent, with no order as to costs.

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